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MARICOPA COUNTY SUPERIOR

ALLEN HARRISON; DOROTHY LAWSON;) Case No.:
LAWRENCE LAWSON; DOUGLAS MACBETH;) MOTION AND COMPLAINT FOR DECLARATORY
MICHAEL PAHLE; MARK KELLNER; RICHARD) JUDGMENT; APPLICATION FOR PRELIMINARY
F. FERGUSON; REBECCA FRIEDMAN;) AND PERMANENT INJUNCTION
SCOTT M. WESTLAKE; BILLY BENJAMIN)
HAYES JR.; TRAVIS FARNHAM; ERIC
JOHNSON; LISA MERRICK

Plaintiffs,

vs.

STATE OF ARIZONA et al; JANICE K.
BREWER, Governor of the State of Arizona, in
her Official Capacity; WILL HUMBLE, Director of
the Arizona Department of Health Services, in
his Official Capacity; ROBERT C. HALLIDAY,
Director of the Arizona Department of Public
Safety, in his Official Capacity; ,

Defendant

COMPLAINT FOR DECLARATORY JUDGMENT; APPLICATION FOR PRELIMINARY AND

PERMANENT INJUNCTION - 1

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1
2 **INTRODUCTORY STATEMENT**

3 Greetings to the Court:

4 Notice, the plaintiffs are not trained attorneys or lawyers and have
5 not been to law school, this motion should have defects, but the
6 plaintiffs are functionally illiterate in the law and do not speak
7 legalese, the Plaintiffs have to rely on law dictionaries, court cases,
8 legislative enactments and his assistant of council, otherwise it would
9 be impossible for the Plaintiffs to file any pleading with the court
10 that would not be defective in some way, as the Law and rules are
11 written for trained bar attorneys, which is why all words in the laws
12 and codes are written in Legalese.

13 Even the federal court recognizes that untrained litigants pleadings
14 are to be construed liberally and held to less stringent standard than
15 formal pleadings drafted by lawyers or attorneys. See Spencer v. Doe,
16 139 F3d 107 (2nd Cir. 1998); Green v. Branson, 108 F3d 1296 (10th Cir
17 1997; Boag v. MacDougall, 454 US 364, 70 Led 2d, 102 Sct 700 (1982);
18 Haines v. Kerner, 404 US 519, 30 L Ed 2d 652 92 Sct 594 (1972).

19
20 Comes now, the Plaintiffs, Pro Se and hereby moves this Court to
21 preliminarily enjoin enforcement of Arizona Revised Statute 36-
22 2804.02(A)(3)(f), (hereafter "25-Mile Rule") and to preserve the status
23 quo with respect to that portion of the Arizona Medical Marijuana Act
24 (hereafter "AMMA") that allows for cultivation of Medical Marijuana
25 under clearly delineated circumstances. At a minimum, the within
26 request is advanced until such time as the matter can be litigated via
27 Oral Argument, which is requested herein. The within challenge is
28 specific to the 25-Mile Rule, *exclusively* and should *not* serve to

1 diminish the remainder of the Act. In support of the within,

2 Plaintiffs state as follows:

3 1. Although a state may adopt regulations that have an
4 indirect or incidental effect on Medical Marijuana, a state
5 may not establish state laws in a manner that interferes with Federal Equal
6 Protection under the 14th Amendment to the United States Constitution. See
7 also: U.S. Const. amend X. Nor is it in the interest of the State to
8 enforce laws that are in conflict of its own State Constitution.

9
10 2. This is an action for declaratory judgment and injunctive
11 relief challenging A.R.S. 36-2804.02 (A) (3) (f) as unconstitutional under
12 the Federal Equal Protection, 14th Amendment to the United States
13 Constitution, as well as, the Arizona State Constitution is specific
14 Article 14. Section 15. Plaintiffs seek an order pursuant to Arizona's
15 Declaratory Judgment Act, A.R.S. § 12-1832. The Act provides that "[a]ny
16 person...whose rights, status or other legal relations are affected by a
17 statute...may have determined any question of construction or validity
18 arising under the [statute] and obtain a declaration of rights, status or
19 other legal relations there under." It is a remedial statute intended to
20 "settle and to afford relief from uncertainty and insecurity with respect
21 to rights, status and other legal relations." Planned Parenthood Ctr. of
22 Tucson, Inc. v. Marks, 17 Ariz. App. 308, 310, 497 P.2d 534, 536 (1972).
23 Declaratory judgment must be based on an actual controversy. Id.

24
25
26 3. Plaintiffs seek declaratory judgment that A.R.S. 36-2804.02
27 (A) (3) (f) is in violation of the U.S. Constitution Amendment XIV.
28

COMPLAINT FOR DECLARATORY JUDGMENT; APPLICATION FOR PRELIMINARY AND

1 4. Plaintiffs seek declaratory judgment that A.R.S. 36-2804
2 (A) (3) (f) is in violation of the Arizona State Constitution Article 14
3 Section 15.

4
5 5. Plaintiffs seek preliminary and permanent injunction
6 restraining each of defendants from violating the U.S. Constitution and/or
7 Arizona State Constitution and enforcing laws that are unconstitutional.
8 The law does not require Plaintiffs to be arrested and to face criminal
9 prosecution to obtain declaratory relief. Planned Parenthood, 17 Ariz. App.
10 at 312, 497 P.2d at 538 ("To require statutory violation and exposure to
11 grave legal sanctions; to force parties down the prosecution path, in
12 effect compelling them to pull the trigger to discover if the gun is
13 loaded, divests them of the forewarning which the law, through the Uniform
14 Declaratory Judgments Act, has promised.")

15
16 **JURISDICTION**

17 6. This Court has jurisdiction pursuant to A.R.S. § 12-123

18
19 7. This Court has the power to issue declaratory relief
20 pursuant to A.R.S. § 12-1831 and Rule 57, A.R.C.P., and injunctive relief
21 pursuant to A.R.S. § 12-1801, and Rule 65, A.R.C.P.

22 **PARTIES**

23 8. I, Plaintiff Billy B. Hayes Jr. representing "Plaintiffs" in oral
24 argument, am a resident of the City of El Mirage, County of Maricopa, in
25 the State of Arizona. I am a registered medical marijuana patient with the
26 Arizona Department of Health Services (here after AZDHS), see exhibit A-1.

9. Plaintiffs are residents of Arizona and registered medical marijuana patients with AZDHS at the time of this filing. See exhibit A-1.

10. Plaintiffs ALLEN HARRISON; DOROTHY LAWSON; LAWRENCE LAWSON; DOUGLAS MACBETH; RICHARD F. FERGUSON; BILLY BENJAMIN HAYES JR.; TRAVIS FARNHAM; ERIC JOHNSON; LISA MERRICK

., have had their cultivation rights revoked as a direct result of A.R.S. 36-2804.02 (A) (3) (f) see exhibit A-1, a-j. Plaintiffs REBECCA FRIEDMAN; SCOTT M. WESTLAKE and MICHAEL PAHLE are currently authorized to cultivate pursuant to A.R.S. 36-2804.02 (A) (3) (f) and risk losing that authorization when a dispensary opens within 25 miles of their residence consistent with the aforementioned Plaintiffs current authorization status. See exhibit A-2, k-m.

11. Defendant State of Arizona is a sovereign state of the United States.

12. Defendant Janice K. Brewer is the Governor of the State of Arizona (hereafter "Governor Brewer"). In that capacity, Governor Brewer is vested with the supreme executive power of Arizona and is responsible for the execution of all laws, including the Arizona Medical Marijuana Act (hereafter "AMMA"), as codified in A.R.S. 36-2801, et. seq.

13. Defendant Robert C. Halliday (hereafter "Director Halliday") is the Director of the Arizona Department of Public Safety (hereafter "DPS"). The DPS employees, under the direction of Director Halliday, perform criminal background checks and use the web-based verification system of the AMMA to verify registry identification cards, issue criminal citations, arrest suspected offenders of violations of Arizona criminal laws, etc.

COMPLAINT FOR DECLARATORY JUDGMENT; APPLICATION FOR PRELIMINARY AND

1
2 BACKGROUND

3 14. The AMMA was passed by Arizona voters in November 2010, and became law on
4 December 14, 2010. The same was subsequently codified in A.R.S. 36-2801,
5 et. seq.

6 Pursuant to A.R.S. 36-2804.02 (emphasis added), Registration of
7 Qualifying Patients and Designated Caregivers,

8 A. A qualifying patient may apply to the department for a registry
9 identification card by submitting:

10 1. Written certification issued by a physician within the ninety days
11 immediately preceding the date of application.

12 2. The application fee.

13 3. An application, including:

14 (a) Name, mailing address, residence address and date of birth of the
15 qualifying patient except that if the applicant is homeless no address
16 is required.

17 (b) Name, address and telephone number of the qualifying patient's
18 physician.

19 (c) Name, address and date of birth of the qualifying patient's
20 designated caregiver, if any.

21 (d) A statement signed by the qualifying patient pledging not to divert
22 marijuana to anyone who is not allowed to possess marijuana pursuant to
23 this chapter.

24 (e) A signed statement from the designated caregiver, if any, agreeing
25 to be the patient's designated caregiver and pledging not to divert
26 marijuana to anyone who is not allowed to possess marijuana pursuant to
27 this chapter.
28

1 (f) A designation as to who will be allowed to cultivate marijuana
2 plants for the qualifying patient's medical use if a registered
3 nonprofit medical marijuana dispensary is not operating within twenty-
4 five miles of the qualifying patient's home.

5
6 B. The application for a qualifying patient's registry identification
7 card shall ask whether the patient would like the department to notify
8 him of any clinical studies needing human subjects for research on the
9 medical use of marijuana. The department shall notify interested
10 patients if it is notified of studies that will be conducted in the
11 United States.

12 15.A.R.S. 36-2801 (11) defines a "Qualifying Patient" as a person who has
13 been diagnosed by a physician as having a debilitating medical condition.
14

15 16.The AMMA has already been the subject of litigation in various courts
16 across Arizona. The most recent action was a request for declaratory
17 judgment in which the ACLU represented Jennifer and Jacob Welton, parents
18 of Zander Welton, a registered medical marijuana patient in the State of
19 Arizona, see CV2013-014852. "On February 14, 2014, the Court heard oral
20 argument and took under advisement Plaintiffs' claim for declaratory
21 judgment. The issue is one of statutory interpretation: Does Arizona's
22 Medical Marijuana Act ("AMMA") allow medical marijuana to be consumed in
23 extract form? As set forth below, the Court concludes it does and that
24 Plaintiffs are entitled to an order that decriminalization of marijuana
25 for medicinal purposes includes extracts adapted from marijuana." The
26 full minute entry can be read at
27 <http://www.courtminutes.maricopa.gov/docs/Civil/032014/m6226527.pdf>
28

1 The most applicable to this particular case would be the Keith Floyd
2 and Daniel Cassidy v. ADHS (CV2013-011447) which sought to remove the 25-
3 mile rule on different legal grounds. The minute entry from Honorable
4 Kathleen Cooper makes only slight reference to an amended motion, or
5 rather a "special action" being advanced by the attorney of record. During
6 the argument on their request, the two men Floyd and Cassidy made mention
7 of a failure of Equal Protection under the law but had made no case and
8 presented nothing to support the statement. Although Honorable Judge
9 Cooper agreed with the man in the fact that the AMMA did in fact appear to
10 be in conflict with the Equal Protection Act, the case was dismissed and
11 Judge Cooper gave the men time to amend their motion and present that
12 argument to the court however they failed to do so within the time
13 constraints.

14 17. The AMMA was passed by Arizona voters in November 2010, and became law on
15 December 14, 2010. The purpose of the AMMA was to decriminalize the
16 possession, use, production, transport, sale, or transfer of marijuana
17 for certain explicitly delineated individuals and entities, specifically
18 "non profit medical marijuana dispensaries, " " non profit medical
19 marijuana dispensary agents," "qualifying patients," and "designated
20 caregivers."

21 18. Under the AMMA, the Arizona Department of Health Services ("ADHS") is
22 responsible for implementing and overseeing the Act. The AMMA provides
23 for the registration and certification by the ADHS of nonprofit medical
24 marijuana dispensaries, nonprofit medical marijuana dispensary agents,
25 qualifying patients, and designated caregivers.

26 19. The State of Arizona, as represented by Tom Horne, Arizona Attorney
27 General, filed a request for declaratory judgment (CV2011-014508) in
28 which the State argued: "In addition to growing their own marijuana, the

1 only other permissible way for qualifying patients or designated
2 caregivers to obtain marijuana is from a nonprofit medical marijuana
3 dispensary agent at the nonprofit medical marijuana dispensary with which
4 the dispensary agent is affiliated, or from another qualifying patient or
5 designated caregiver. A.R.S. §§ 36-2806.02 & 36-2811(B)(3).

6 20. AZDHS drafted their own interpretation of the words "within 25 miles of
7 an operating dispensary" to reflect a 25-mile radius or "as the crow
8 flies" surrounding registered dispensaries. This interpretation has been
9 the source of a plethora of negative attention from patients and multiple
10 court cases. Most recently AZDHS Director Will Humble released a
11 statement to the public in which he eluded that "as the crow flies" would
12 be changed during the next rule making session to wording that reflects a
13 more realistic approach such as "by road".

14 21. This interpretation was designed and implemented to restrict patient's
15 access to medication and effectively prevent patients from cultivating
16 their own medicine in accordance with the provisions of the AMMA and the
17 ballot materials provided to the electorate. On January 31 2011 AZDHS
18 offered a "news release" to the press and to the public which stated "The
19 new draft rules require a physician who certifies a patient for medical
20 marijuana to attest to having diagnosed or confirmed the relevant
21 diagnosis. **The draft rules provide for a geographic distribution of the
22 dispensaries to provide easy access to dispensaries and limit the number
23 of people who grow marijuana for themselves.**" emphasis added.

24 22. The stated intent of the draft rules was to "provide easy access to
25 dispensaries" while at the same time the purpose was to also "limit the
26 number of people who grow marijuana for themselves. This is in stark
27 contrast to the stated intent of the AMMA which is " ...to protect patients
28 with debilitating medical conditions, as well as their physicians and
providers, from arrest and prosecution, criminal and other penalties and
property forfeiture if such patients engage in the **medical use** of

1 marijuana. This contrast comes as no surprise however when the Defendant
2 clearly stated their dislike on the initiative's ballot materials labeled
3 "ARGUMENTS "AGAINST" PROPOSITION 203"- "Dear Arizonan: The ADHS does not
4 support the passage of Proposition 203- the Arizona Medical Marijuana
5 Act."

6 ... Will Humble, Director, Arizona Department of Health Services, Phoenix,
7 (see exhibit E)

8 23. On May 2 2011 Dennis Burke drafted a letter to Will Humble and AZDHS
9 which stated the following "The USAO also has received inquiries
10 about our approach to AMMA in Indian Country, which comprises nearly
11 one third of the land and five percent of the population of Arizona,
12 and in which state law -including AMMA- is largely inapplicable. The
13 USAO currently has exclusive felony jurisdiction over drug
14 trafficking offenses in Indian Country." (exhibit F,
15 http://www.justice.gov/usao/az/reports/USAO_Medical_Marijuana_May_2011_Letter.pdf)

16 24. "State courts do not have jurisdiction on Indian
17 reservations without Congressional authorization, to allow state
18 infringement undermines tribal sovereignty." *Williams v.*
19 *Lee*, 358 U.S. 217 (1959)

20 25. The aforementioned media announcement letter and the current CHAA
21 map displayed on the AZDHS website (see exhibit G) demonstrate the
22 attempt by AZDHS to apply blanket style coverage to the entire state
23 to effectively eliminate home growing by registered medical marijuana
24 patients even where the AMMA is not currently applicable such as
25 "Indian Country" or approximately one third of the State of Arizona.
26 This intent is in direct contrast to the stated intent of the
27 proposition.

28 26. "Medical use" is defined in ARS 28.1, 36-2801, 9. "MEDICAL USE"
MEANS THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE,
ADMINISTRATION, DELIVERY, TRANSFER OR TRANSPORTATION OF MARIJUANA OR
PARAPHERNALIA RELATING TO THE ADMINISTRATION OF MARIJUANA TO TREAT OR
ALLEVIATE A REGISTERED QUALIFYING PATIENT'S DEBILITATING MEDICAL

1 CONDITION OR SYMPTOMS ASSOCIATED WITH THE PATIENT'S DEBILITATING
2 MEDICAL CONDITION." emphasis added.

3 27. All Plaintiffs are registered qualifying patients with the AZDHS as
4 of the date of this filing.

5 28. All plaintiffs had previously been "authorized to cultivate" by the
6 AZDHS and were exercising that ability pursuant to, 36-2801(1)(a)(ii)
7 which reads;

8 36-2801. Definitions (Caution: 1998 Prop. 105 applies)

9 In this chapter, unless the context otherwise requires:

10 1. "Allowable amount of marijuana"

11 (a) With respect to a qualifying patient, the "allowable amount of
12 marijuana" means:

13 (i) Two-and-one-half ounces of usable marijuana; and

14 (ii) *If the qualifying patient's registry identification card states that
15 the qualifying patient is authorized to cultivate marijuana, twelve
16 marijuana plants contained in an enclosed, locked facility except that the
17 plants are not required to be in an enclosed, locked facility if the
18 plants are being transported because the qualifying patient is moving.*

19 Emphasis added.

20 29. All plaintiffs who previously lived 25 miles or more from the
21 closest dispensary no longer reside outside the 25-mile radius of an
22 operating dispensary and therefore are no longer "authorized to
23 cultivate" pursuant to A.R.S. 36-2804.02 (A) (3) (f).

24 30. All plaintiffs who currently reside 25 miles or more from a
25 dispensary (see exhibit A-2) wish to be enjoined in this cause of
26 action as they represent the remaining 4% of the State of Arizona
27 that is not "Indian Country" and available for medical marijuana
28 patients to grow their own medicine at home. Their cultivation status
29 will be directly affected in a manner consistent with that of the
30 other aforementioned Plaintiffs. (see exhibit A-1)

31 31. Pursuant to the AMMA, by processing Dispensary applications and the
32 licensing of the same our ability to renew our cultivation status is
33 affected where as an equally situated registered Qualifying Patient
34 residing beyond 25 miles from a Dispensary will be allowed to renew

1 their cultivation authorization unabated and without threat of
2 criminal prosecution from State level law enforcement agencies.
3 32. Suffice it to say, at a minimum, granting the within prayer for
4 relief simply preserves the status quo with respect to qualified
5 patients' rights to cultivation and will not result in some chaotic
6 Medical Marijuana program, with the State of Arizona being over-run
7 by marijuana cultivation. In fact, marijuana cultivation has been
8 authorized under the AMMA ever since qualifying patient information
9 began being processed and State Issued Identification cards began
10 being issued in early 2011 and the State of Arizona has not suffered
11 any damages as a result. It would be difficult to imagine a scenario
12 where preserving the status quo while at the same time continuing to
13 allow the processing and licensing of Dispensaries would lead to some
14 sort of concrete (as opposed to speculative) damage(s) to the
15 Defendants.

16 33. In the instant case, the doctrine of sever-ability applies and the
17 Legislative intent requirement is satisfied simply by looking to the
18 Defendants' (herein, Plaintiffs therein) Complaint in *State of*
19 *Arizona, et. al. v. The 2811 Club, LLC, et. al.*, CV 2011-01129,
20 Arizona Superior Court, the State of Arizona firmly stated that,
21

22 *"The purpose of the AMMA was to decriminalize the possession,*
23 *use, production, transport, sale, or transfer of marijuana for*
24 *certain explicitly delineated individuals and entities, specifically*
25 *'nonprofit medical marijuana dispensaries,' 'nonprofit medical*
26 *marijuana dispensary agents,' 'qualifying patients', and 'designated*
27 *caregivers'."* See: Exhibit ***, State of Arizona Complaint, Case
28 Number CV 2011-01129, attached hereto and incorporated herein, at p.
4, para. 17, l. 23-27. (Emphasis added). By way of extrapolation,

COMPLAINT FOR DECLARATORY JUDGMENT; APPLICATION FOR PRELIMINARY AND

1 it is inarguable that by the State's very own pleading, the 25-Mile
2 Rule is in fact directly contrary to the intent of the State of
3 Arizona in adopting the AMMA; that intent to decriminalize with
4 respect to certain delineated individuals/organizations.

5 34. The Seventh Circuit which has recognized that "the mere existence of
6 a law sometimes can serve as a threat that would in and of itself
7 make ripe a claim challenging the constitutionality of the law."

8 *Schmidling v. City of Chicago*, 1 F.3d 494, 499-500 (7th Cir. 1993),
9 citing *Babbitt*, 442 U.S. at 298, *New York State Club Ass'n v. City of*
10 *New York*, 487 U.S. 1, 8-10 (1988), and *Kucharek v. Hanaway*, 902 F.2d
11 513, 516 (7th Cir. 1990) Further, when the plaintiff has alleged an
12 intention to engage in a course of conduct arguably affected with a
13 constitutional interest, but proscribed by a statute, and there
14 exists a credible threat of prosecution there under, he "should not
15 be required to await and undergo a criminal prosecution as the sole
16 means of seeking relief."

17 *Id.* at 298, quoting *Doe v. Bolton*, 410 U.S. 179, 188 (1973).

18
19
20 CLAIM ONE

21 35. A.R.S. 36-2804.02 (A) (3) (f) is Unconstitutional under U.S. Const.

22 amend. XIV. The Fourteenth Amendment to the United States
23 Constitution provides that no State "[s]hall deprive any person of
24 life, liberty, or property, without due process of law; nor deny to
25 any person within its jurisdiction the equal protection of the
26 laws." U.S. Const. amend. XIV.

27 36. Under the current AMMA scheme, a Qualifying Patient that is
28 authorized to cultivate marijuana is subject to no Arizona State

1 criminal charges (provided they are cultivating in accordance with
2 the terms of the AMMA) so long as they are beyond the 25-Mile Rule
3 radius of a Dispensary. In turn, however, a Qualifying Patient that
4 is not authorized to cultivate marijuana, simply by the very nature
5 of their location with respect to a state licensed Dispensary would
6 be subject to the various State of Arizona criminal statutes, (e.g.
7 A.R.S. 13-3405), with varying degrees of offense, from misdemeanor to
8 felony (depending on the nature of the charge(s)) and subject to
9 disastrous penalties and/or consequences. It is our belief that such
10 action is neither what the voters of Arizona intended nor the
11 legislature contemplated when codifying the AMMA.

12 **CLAIM TWO**

13 37. A.R.S 36-2804.02 (A) (3) (f) is unconstitutional under Arizona State
14 Constitution Article 14 Section 15. "Section 15. Monopolies and
15 trusts shall never be allowed in this state and no incorporated
16 company, co-partnership or association of persons in this state shall
17 directly or indirectly combine or make any contract, with any
18 incorporated company, foreign or domestic, through their stockholders
19 or the trustees or assigns of such stockholders or with any co-
20 partnership or association of persons, or, in any manner whatever, to
21 fix the prices, limit the production, or regulate the transportation
22 of any product or commodity. The legislature shall enact laws for the
23 enforcement of this section by adequate penalties, and in the case of
24 incorporated companies, if necessary for that purpose, may, as a
25 penalty declare a forfeiture of their franchises." Upon being granted
26 a "certificate to operate" from AZDHS, a medical marijuana dispensary
27
28

1 automatically triggers the 25-Mile Rule limiting production of
2 marijuana to the dispensaries, and criminalizing the cultivation of
3 marijuana by registered patients. According to AZDHS over 96% of the
4 State of Arizona is no longer authorized to cultivate as dispensaries
5 have opened in the appropriated CHAA area restricting cultivation by
6 patients.

7
8
9 38. Currently the registered dispensaries of Arizona operate a coercive
10 monopoly in regards to the production, distribution and transfer of
11 medical marijuana within the State of Arizona. As described by the
12 Registered Dispensary Association of Arizona (hereafter RDAA)
13 themselves, they seek to expand their control of production and
14 distribution, furthering the expansion of their monopoly over the
15 medical marijuana industry by way of demonizing any legitimate
16 potential competition in the media.

17 "A group representing licensed medical marijuana dispensaries in
18 Arizona is asking police and sheriff's authorities statewide to
19 crack down on unlicensed and illegal medical marijuana clubs. The
20 *Regulated Dispensaries of Arizona Association* said in a letter to
law enforcement agencies that it is concerned about *the threat the
unlicensed clubs pose to the medical marijuana industry. Emphasis
added, original article located at*
[http://www.kpho.com/story/21644996/medical-pot-facilities-group-
want-unlicensed-clubs-shut-down#.U3A5vks8Mnw.facebook](http://www.kpho.com/story/21644996/medical-pot-facilities-group-want-unlicensed-clubs-shut-down#.U3A5vks8Mnw.facebook)

21 "Clubs" are described in the letter as "illegal" however the
22 legality of patient to patient transfers of marijuana for "anything
23 of value" has yet to be decided, see *Arizona v Chase*, Pima County
24 Cause No. CR20124003001, 2 CA-SA 2013-0025, "In his response to the
25 state's petition for special action, Chase argues that the AMMA's
26 protections are conditioned only on not transferring marijuana to a
27 dispensary for value and that a cardholder still is protected if he
28 or she transfers marijuana to another cardholder in exchange for
value. As Chase concedes, the trial court has not had an adequate
opportunity to address this argument or to allow for the development
of evidence on the related factual issues. Thus, our consideration
of this issue appears premature and would be largely advisory.
Therefore, in our discretion, we decline to address this argument."

1 39. In economics and business ethics, a **coercive monopoly** is a business
2 concern that prohibits competitors from entering the field, with the
3 natural result being that the firm is able to make pricing and
4 production decisions independent of competitive forces. A coercive
5 monopoly is not merely a sole supplier of a particular kind of good
6 or service (a monopoly), but it is a monopoly where there is no
7 opportunity to compete through means such as price competition,
8 technological or product innovation, or marketing; entry into the
9 field is closed. As a coercive monopoly is securely shielded from
10 possibility of competition, it is able to make pricing and production
11 decisions with the assurance that no competition will arise. It is a
12 case of a non-contestable market. A coercive monopoly has very few
13 incentives to keep prices low and may deliberately price
14 gouge consumers by curtailing production. Also, according to
15 economist Murray Rothbard, "a coercive monopolist will tend to
16 perform his service badly and inefficiently".

18 40. Advocates of free markets say that the only feasible way that a
19 business could close entry to a field and therefore be able to raise
20 prices free of competitive forces, i.e. be a coercive monopoly, is
21 with the aid of government in restricting competition, creating a
22 "government granted monopoly".

23 41. Such aid does exist in this particular case in that the AZDHS was
24 tasked with promulgating the rules that govern specific aspects of
25 the AMMA including registered cultivation locations and registered
26 dispensary locations.

1 42. I Will Suffer Irreparable Harm Absent an Injunction. Upon

2 demonstrating a likelihood of success on the merits, a plaintiff must
3 also establish that, absent the injunction, there is likelihood that
4 the defendant's conduct will cause irreparable harm. See: *Winter v.*
5 *Natural Res. Def. Council*, 129 S. Ct. 365, 375-76 (2008).

6 Injunctive relief is necessary here because the 25-Mile Rule will
7 cause irreparable harm to Plaintiffs in that our resources are
8 limited and private cultivation had been crucial to our medicinal
9 regime. The minute the 25-Mile Rule was triggered, Plaintiffs'
10 ability to medicate per the AMMA was greatly compromised, while the
11 preservation of the status quo will allow Plaintiffs' the opportunity
12 to utilize their cultivation experience and provide the best possible
13 medicinal program for their condition(s). Not only that, but there
14 exists a potential litany of lawsuits as demonstrated by the request
15 for a class action (see exhibit H) ,
16 http://www.sueeasy.com/class_action_detail.php?case_id=697)

17
18 43. A Balancing of Equities Favors Me as the Plaintiff and Demonstrates
19 that the Public Interest Would be Served by Granting Injunctive
20 Relief. Finally, injunctive relief is necessary because a
21 consideration of the public interest and the balance of hardships
22 between the parties favors the abolishment of the 25-Mile Rule. See
23 *Stormans*, 586 F.3d at 1127. In this action, which seeks to protect
24 our interests as individual Plaintiffs, as well as those individual
25 rights , the burdens that will result absent injunctive relief are
26 directly tied to the public benefits that will be protected if this
27 Court issues the requested injunction. Cf. *Nken v. Holder*, 129 S. Ct.

1 1749, 1762 (2009) (stating, in the related context of criteria
2 governing stay of removal, that the criteria of "harm to the opposing
3 party" and "the public interest" "merge when the Government is the
4 opposing party" because harm to the Government is harm to the public
5 interest).

6 **CONCLUSION**

7 44. Recently AZDHS has issued a "revised Medical Marijuana Rules and
8 Regulation" package for public comment in which the "as the crow
9 flies" portion of the 25-Mile Rule is revised to now read "when
10 traveling by vehicle" after mass complaints from the registered
11 medical marijuana cardholders of Arizona that represent the status
12 quo in this situation. The cost to taxpayers alone, of the
13 additional resources necessary to address this unconstitutional
14 provision will be immeasurable. The same can simply be stalled
15 pending resolution of the Constitutional issues regarding the 25-Mile
16 Rule. In the interim, the status quo, while proceeding forward with
17 the remaining portions of the AMMA is the most pragmatic and
18 responsible approach given the gravity of consequences that could be
19 faced in denying the request for Injunctive Relief from the 25-Mile
20 Rule, pending resolution of its Constitutionality at Oral Argument,
21 or as this Court deems fit and proper in the premises.

22
23 45. Were this Court ultimately to conclude that the 25-Mile Rule does
24 not offend the Fourteenth Amendment to the United States
25 Constitution, or Article 14 Section 15 of the Arizona State
26 Constitution, Arizona would then be able to continue enforcement the
27 25-Mile Rule without having suffered any substantial burden.
28

1 46. What is more, indeed, Arizona has no legitimate interest in the
2 enforcement of a law that likely violates the 14th Amendment to the
3 United States Constitution and Article 14 Section 15 of the Arizona
4 State Constitution. *See Chamber of Commerce of U.S. v. Edmonson*, 594
5 F.3d 742, 771 (10th Cir. 2010) ("Oklahoma does not have an interest
6 in enforcing a law that is likely constitutionally infirm.")

7 47. A declaration by this court that a small portion of the AMMA is
8 unconstitutional will not thwart the will of the voters since the AMMA
9 has a severability clause. Proposition 203, Voter Initiative 2010,
10 Section 7, Severability

11 48. The probability of irreparable harm is certain. Many qualifying patients
12 including the plaintiffs will do without the most effective treatment for
13 their specific debilitating condition and many will likely return to
14 using opiate based drugs despite the side effects and well documented
15 dangers.

16 49. The probability of harm and or loss discussed here is in direct
17 contradiction to the stated intent of the AMMA which is to eliminate
18 criminal penalties for those using medical marijuana to treat their
19 debilitating condition.

20 PRAYERS FOR RELIEF

21 50. This court declare A.R.S. 36-2804.02(A)(3)(f) unconstitutional as it
22 relates to precluding qualifying medical marijuana patients from
23 cultivating medical marijuana in their own home if they live less than 25
24 miles from a state licensed dispensary under the Federal Equal
25 Protection, 14th Amendment to the United States Constitution, as well as,
26 the Arizona State Constitution is specific Article 14 Section 15. The
27 court should further permanently enjoin Defendants from enforcing such
28 provision in order to preserve the freedom of Arizona's medical marijuana

COMPLAINT FOR DECLARATORY JUDGMENT; APPLICATION FOR PRELIMINARY AND

1 patients to produce their own medicine for their own specific
2 debilitating condition.

3 51. Defendants be preliminarily enjoined during the pendency of this action
4 from enforcing ARS 36-2804.02(A)(3)(f) as it relates to the precluding of
5 qualifying patients from cultivating medical marijuana in their own home
6 if they live less than 25-miles from a state licensed dispensary under
7 Arizona State Constitution Article 14 Section 15.

8 52. The court declare that all qualifying medical marijuana patients may
9 cultivate medical marijuana, under all existing medical marijuana
10 limitations and regulations, with the exception of disallowing otherwise
11 qualifying patients residing within 25 miles of a registered medical
12 marijuana dispensary, and therefore preserving the status quo.

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17 Dated this of ,

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21 Plaintiffs
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